

FILED

APR 4 2003

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

KAVIN MAURICE RHODES,

Petitioner-Appellant,

v.

ERNEST C. ROE, Warden; ATTORNEY
GENERAL OF THE STATE OF
CALIFORNIA; DANIEL LUNGREN,

Respondents-Appellees.

No. 01-55138

D.C. No. CV-97-07416-LGB

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Lourdes G. Baird, District Judge, Presiding

Argued and Submitted March 5, 2003
Pasadena, California

Before: LAY,** HAWKINS, and TALLMAN, Circuit Judges.

Kavin Rhodes appeals the denial of his 28 U.S.C. § 2254 habeas petition.

Rhodes claims his Sixth Amendment rights were violated because the state trial

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The Honorable Donald P. Lay, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

court denied his three Marsden requests to substitute his court-appointed lawyer for new counsel. See People v. Marsden, 2 Cal.3d 118 (1970) (recognizing that a California criminal defendant may move to have his court-appointed attorney substituted for different counsel if the appointed attorney is rendering inadequate assistance). In denying Rhodes's three Marsden motions, three different superior court judges found that Rhodes was receiving the effective assistance of counsel. The court also found that Rhodes was generally not credible when articulating how his court-appointed attorney was deficient. Absent clear and convincing evidence that Rhodes was in fact credible, we must defer to the trial court's credibility determination. See 28 U.S.C. § 2254(e)(1). We find that Rhodes has not satisfied his burden of rebutting the trial court's credibility determination, and we therefore conclude that the trial court's Marsden rulings were not contrary to or an unreasonable application of clearly established federal law. 28 U.S.C. § 2254(d).

After the trial court denied his third Marsden motion, Rhodes elected to proceed pro per. We hold that Rhodes's waiver of his right to counsel was knowing, intelligent, and voluntary. See Faretta v. California, 422 U.S. 806, 835 (1975) (holding that under the Sixth Amendment a criminal defendant may waive his right to counsel if that waiver is knowing, intelligent, and voluntary). The trial

court repeatedly warned Rhodes of the dangers of proceeding without legal counsel, and Rhodes decided to proceed without counsel nonetheless. Rhodes's argument that his waiver of counsel was involuntary because the trial court forced him to proceed pro per by denying his Marsden motions is without merit. See United States v. Robinson, 913 F.2d 712, 716 (9th Cir. 1990) (observing that "limitations on the range of a defendant's free choice with regard to appointed or retained counsel are not constitutionally offensive and do not render a subsequent election of pro se status involuntary").

Rhodes further argues that the state trial court violated the Equal Protection Clause of the Fourteenth Amendment by denying him access to the transcript from a separate trial. We find no cases requiring a trial court to furnish a defendant with a free copy of a transcript from another trial. The state court's decision is thus not in conflict with clearly established federal law.

Judgment AFFIRMED.